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5-316A035

INTERSTATE COMMERCE COMMISSION

November 12, 1985

NOV 12 1985

Ms. Mildred Lee
Interstate Commerce Commission
12th & Constitution Avenue
Washington, D.C. 20423

Dear Ms. Lee:

Enclosed for ICC filing is a Mortgage and Security Agreement dated November 6, 1985, between the following parties and railroad equipment:

Secured Party(s): Wayne H. Waughtel
Barbara Waughtel
Helmut J. Dueck
Emma Lou Dueck

Debtor: Robert G. Lucas

5, 70-ton Refrigerator Railroad Cars
REMX 1096, 1097, 1111, 1112, 1113

Please record this document as an original agreement. Thank you.

Sincerely,

Mary Ann Oster

Mary Ann Oster
Research Consultant

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100-471-111
FBI - WASH DC

Mary Ann Oster
Research Consultant

**MORTGAGE
AND
SECURITY AGREEMENT**

NOV 12 1985 - 10 15 AM
INTERSTATE COMMERCE COMMISSION

This MORTGAGE AND SECURITY AGREEMENT (the "Agreement") is entered into as of November 6, 1985, by and between Robert G. Lucas (the "Debtor"), on the one hand, and Wayne H. Waughtel, Barbara Waughtel, Helmut J. Dueck and Emma Lou Dueck (collectively the "Secured Party"), on the other hand.

RECITALS

A. Debtor and Secured Party have entered into a Settlement and Conditional Sales Agreement dated as of November 6, 1985 (the "Settlement Agreement"), to settle certain pending litigation between the parties hereto.

B. Pursuant to the terms of the Settlement Agreement, Secured Party shall convey to Debtor all of Secured Party's right, title and interest to those certain railroad cars and related equipment more fully described in Exhibit "A" hereto (the "Collateral").

C. Debtor desires to purchase the Collateral back from Secured Party and, in connection therewith, has requested that Secured Party extend to Debtor credit and financial accommodations to enable Debtor so to purchase the Collateral.

D. Secured Party is willing to extend to Debtor such credit and financial accommodations in connection with said

purchase pursuant to the Settlement Agreement, provided that Debtor hypothecates the Collateral to Secured Party as security for its performance of certain obligations hereunder and under the Settlement Agreement.

AGREEMENT

NOW, THEREFORE, the parties hereto agree as follows:

1. **Grant of Security Interest.** Subject to the terms and conditions of this Agreement, Debtor hereby grants to Secured Party a security interest in the Collateral to secure Debtor's prompt and complete performance when due of all Obligations, as defined herein, of Debtor to Secured Party. As used herein, "Obligations" shall mean Debtor's prompt and complete performance of all duties, including, without limitation, the prompt payment of all sums required, pursuant to each of the following: (i) the Settlement Agreement, and all amendments thereto; (ii) this Agreement; and (iii) all costs incurred by Secured Party in preserving and enforcing the security interest created hereunder and in preserving the Collateral, such costs to include, without limitation, reasonable attorneys' fees and legal expenses.

2. **Collateral.** As used herein, "Collateral" shall mean the rolling stock and related equipment sold to and thereafter owned by Debtor and more particularly described in Exhibit "A" attached hereto, together with all increases,

additions, and replacements thereof, all proceeds and products thereof and all accessions thereto.

3. Interest and Exclusion. Any expenditures made by Secured Party under the provisions of this Agreement shall be secured by the Collateral and shall be immediately due and payable by Debtor to Secured Party, together with interest thereon at the following rate: a rate equal to the higher of (a) ten percent (10%) per annum, or (b) five percent (5%) per annum plus the rate established by the Federal Reserve Bank of San Francisco on advances to member banks under Sections 13 and 13A of the Federal Reserve Act, as now in effect or hereafter from time to time amended, which rate is prevailing on the twenty-fifth (25th) day of the month preceding the earlier of (i) the date of execution of the contract, if any, to make such extension of credit or financial accommodation, or (ii) the date of making such extension of credit or other expenditure. The rate of interest to be charged under this Agreement shall in no event exceed the maximum legal rate. Notwithstanding anything to the contrary set forth herein, this Agreement shall not secure, unless Debtor and Secured Party shall otherwise agree in writing, such further advances or liabilities which are or may hereafter be "consumer credit," subject to the disclosure requirements of the Federal Truth-in-Lending Law and the regulations promulgated thereto, and which do not arise as a result of any action taken, sum

expended, or expense or liability incurred by Secured Party as provided herein.

4. Covenants of Debtor. Debtor covenants and agrees as follows:

4.1 Location of Collateral. The Collateral is located at the place or places indicated on Exhibit "B" attached hereto. Without the prior written consent of Secured Party, Debtor covenants and agrees not to move the Collateral nor permit the Collateral to be moved from such location; provided, however, that Debtor may transfer the Collateral, or any part thereof, to a management company and in connection therewith the Collateral may be freely moved but Debtor must inform Secured Party in writing of the identity, address and telephone number of the management company on the first day of the term of any such agreement evidencing such a transfer to a management company. Subject to the foregoing, Debtor agrees to provide written notice to Secured Party of the new location of each item of Collateral which is moved from its prior location, promptly upon its being moved but in no event later than three (3) days thereafter, and to provide a written statement of a location of each item of Collateral promptly upon demand.

4.2 Insurance. Debtor shall, at his sole expense, obtain and keep in force during the term of this Agreement a policy or policies of insurance which name Secured Party as an additional insured and which cover loss or damage

to the Collateral. Said insurance shall be in the amount of the full replacement value of the Collateral, but in no event less than the outstanding balance of the Obligations, and shall insure against all perils to which the Collateral is exposed and against those which Secured Party may from time to time designate. Debtor shall provide Secured Party, on demand, with a certificate or certificates evidencing such policy or policies.

4.3 Protection of Condition of Collateral.

Debtor shall, at his sole expense, keep the Collateral in good condition and repair, satisfactory to Secured Party; attend to and maintain the Collateral; provide Secured Party, promptly upon the occurrence of same, with written notice of any damage to the Collateral; and permit Secured Party to enter upon any real property on which the Collateral is located for the purpose of examining the Collateral.

4.4 Perfection of Security Interest. Debtor

shall cooperate with Secured Party to ensure that Secured Party obtains and maintains a fully perfected first priority security interest in the Collateral (subject only to any prior perfected security interest, if any, in the collateral granted or conveyed by Secured Party prior to the date first written above). Such cooperation shall include, without limitation, assisting Secured Party with the giving of such notices as Secured Party deems necessary or appropriate to inform third

parties of Secured Party's security interest in the Collateral and executing from time to time such additional documents and instruments, including but without limitation UCC-1 Financing Statements, if any, as may be requested by Secured Party to perfect, continue or protect the security interest created by this Agreement or otherwise to achieve the purposes of this Agreement.

4.5 Protection of Claims Against Collateral. At his sole expense, Debtor shall appear in and defend any proceeding which may affect title to or Secured Party's security interest in any Collateral and shall pay all costs and expenses of Secured Party, including attorneys' fees, in any such action or proceeding in which Secured Party may appear. Without the prior written consent of Secured Party, Debtor shall not take any action or permit any action to be taken that might impair the value of the Collateral or the value of the security interest created hereby.

4.6 Notices. Debtor shall advise Secured Party in writing of each and every material change in Debtor's financial, business or personal situation which impairs or contributes to the impairment of, or may in the future impair or contribute to the impairment of, Debtor's ability to meet Debtor's Obligations to Secured Party in a timely fashion, immediately upon the occurrence of each such material change.

5. Representations and Warranties of Debtor. Debtor represents and warrants, as follows:

5.1 Authority. Debtor has the capacity to execute, deliver and perform all obligations attendant upon Debtor pursuant to this Agreement, and such actions by Debtor do not contravene any law or any contractual restriction binding on or affecting Debtor. Nor will such actions by Debtor result in or require the creation of any lien, security interest or other charge or encumbrance (other than pursuant hereto) upon or with respect to any of Debtor's properties.

5.2 Governmental Approval. No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by Debtor of this Agreement.

5.3 Debtor's Ownership of Collateral. Debtor warrants that (a) upon the Closing under the Settlement Agreement and the conveyance thereunder of the Collateral from Secured Party to Debtor, Debtor will own the Collateral free and clear of all liens, encumbrances and security interests, other than security interest granted herein and any prior perfected security interest, if any, in the collateral, granted or conveyed by Secured Party prior to the date first written above; (b) Debtor has the right to enter into this Agreement; and (c) all representations and information now or hereafter

given by Debtor to Secured Party in connection with the Obligations are now or will be true and correct when given and will continue to be correct, except as stated in a written notice to Secured Party by Debtor.

6. Secured Party's Right to Act on Behalf of Debtor. Secured Party shall have the following rights to act on behalf of Debtor:

6.1 Filings. Secured Party shall have the right to file one or more financing statements or similar documents in any and all states and jurisdictions, together with such fixture filings, as Secured Party deems necessary or appropriate to perfect its security interest as created hereby.

6.2 Insurance. In the event that Debtor fails to obtain the insurance required hereunder, Secured Party shall have the right, but not the obligation, to obtain it at Debtor's expense. Debtor hereby assigns to Secured Party all proceeds which may become due under any insurance policy or policies covering the Collateral and hereby authorizes Secured Party to endorse any draft or check for the proceeds thereof; provided, however, that Secured Party shall be entitled to such proceeds only to the extent sufficient to constitute performance by Debtor of the Obligations.

6.3 Collateral. In the event that Debtor fails to make any payments necessary to preserve and protect the Collateral, Secured Party may, but shall not be obligated to,

make such payments, and Debtor authorizes Secured Party to enter onto the real property on which the Collateral is located and to take custody and control of the Collateral in order to otherwise preserve and protect the Collateral.

6.4 Attorney-in-Fact. Debtor hereby nominates and appoints Secured Party as his attorney-in-fact, to do all acts and execute such documents as Secured Party may deem necessary or appropriate (i) to perfect and keep perfected the security interest created by this Agreement; (ii) to collect and receive proceeds from the Collateral; (iii) to collect and receive proceeds from any insurance covering the Collateral, and to endorse drafts or checks for such proceeds; and (iv) to defend the Collateral against any claims of third parties. Secured Party shall have no duty to take any of the foregoing acts.

7. Duration of Security Interest and Default.

7.1 Duration. The grant of the security interest, and all other terms and conditions of this Agreement as set forth herein, shall terminate upon the full performance by Debtor of each and every one of the Obligations.

7.2 Default. The occurrence of any one or more of the following is an event of default under this Agreement: (i) a failure of Debtor to perform any of the Obligations in accordance with their terms, or a failure of Debtor to perform any act or duty required by this Agreement or the Settlement

Agreement; (ii) the making by Debtor of an untrue or misleading warranty or representation in this Agreement or the Settlement Agreement; (iii) a substantial change in any fact warranted or represented by Debtor in this Agreement or the Settlement Agreement; (iv) the involvement of Debtor in any bankruptcy or insolvency proceedings; (v) the dissolution or other termination of the existence of Debtor, or its merger or consolidation with another; (vi) a levy on, seizure, or attachment of the Collateral by a third party; and (vii) the filing of any financing statement or similar document, or the execution of any security agreement with regard to the Collateral, other than as relates to this Agreement.

7.3 Secured Party's Rights on Default. Upon the occurrence of any of the events of default set forth herein, Secured Party shall have all the rights provided to a Secured Party by the California Uniform Commercial Code and all other rights available by law. Without in any way limiting the foregoing, Secured Party is entitled (i) to enter onto Debtor's premises and take possession of the Collateral; (ii) to require Debtor to assemble the Collateral and to make it available to Secured Party at a place designated by Secured Party which is reasonably convenient to Secured Party and Debtor; (iii) to render the Collateral unusable in such manner as is reasonable under the circumstances; (iv) to dispose of the Collateral by public or private sale, either at Debtor's premises or

elsewhere within or without the state in which Debtor has its principal place of business, as Secured Party in the good faith exercise of its discretion deems necessary or appropriate, including but not limited to the county in which Secured Party has its principal place of business; (v) to purchase the Collateral at public sale; (vi) to purchase the Collateral at private sale for a price and on such terms as is determined by an independent appraiser appointed by Secured Party to be the price and terms at which a willing seller would be ready to sell to an able buyer; (vii) to notify an account debtor or the obligor on an instrument, if any, to make payment to Secured Party, whether or not Secured Party was theretofore making collections on the respective account or instrument; (viii) to take control of any and all proceeds to which Secured Party is entitled; and (ix) to charge back uncollected Collateral, if any, or otherwise to obtain full or limited recourse against Debtor. Any notice of sale, disposition or other intended action by Secured Party sent to Debtor at least five (5) days prior to such action shall constitute reasonable notice to Debtor, and a private sale of the Collateral to a person not controlled by Secured Party shall be conclusively deemed to be commercially reasonable, notwithstanding the fact that a better price could have been obtained by a sale at a different time or by a different method. Debtor hereby acknowledges and agrees that Secured Party may so dispose of the Collateral by

negotiated private sale and that such disposition shall constitute conformity with reasonable commercial practices. Upon any sale of the Collateral, Secured Party must account to Debtor for any surplus, and Debtor is liable for any deficiency thereon.

8. General Terms and Conditions.

8.1 No Waiver. The waiver of any default or event of default hereunder shall not be a waiver of any subsequent default or event of default. Secured Party's acceptance of partial or delinquent payments or Secured Party's failure to exercise any rights it may have shall not waive any obligation of Debtor or any rights of Secured Party or otherwise modify this Agreement or waive any other similar matter.

8.2 Amendments. No amendment or waiver of any provision of this Agreement, nor consent to any departure by the Debtor herefrom, shall in any event be effective unless the same shall be in writing and signed by Secured Party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

8.3 Notices. Any written notice or other communication under this Agreement shall be treated as given upon the earlier of (i) personal receipt by the party to be notified or (ii) the expiration of two (2) days from the date on which the notice was placed in the United States mail,

certified or registered, postage prepaid, addressed to the party to be notified at the address set out below or at any address furnished to the notifying party with a written request for notice at that address. The addresses to which notice shall be given, until changed in accordance with this section, are as follows:

Debtor:
Ronald Pinsky, Esq. *Atty gen Debtor*
401 West "A" Street, Suite 1400
San Diego, CA 92010

and

Robert G. Lucas
P. O. Box 2728
Aikens, SC 29801

Secured Party:
James F. Stiven, Esq. *Atty for Secured Parties*
Gray, Cary, Ames & Frye
401 "B" Street, Suite 1700
San Diego, California 92101

8.4 Attorneys' Fees. Should either party hereto employ an attorney for the purpose of enforcing or construing this Agreement, or to obtain any judgment based upon this Agreement, in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, the prevailing party shall be entitled to receive from the other party or parties thereto reimbursement for all attorneys' fees and all costs, including but not limited to service of process, filing fees, court and court reporter costs, investigative costs, expert witness fees and

the costs of any bonds, whether taxable or not, and that such reimbursement shall be included in any judgment or final order issued in such proceeding. As used herein, "prevailing party" shall mean the party determined by the court to most nearly prevail and not necessarily the one in whose favor a judgment is rendered. Furthermore, if a party hereto defaults on its obligations hereunder, the non-defaulting party shall be entitled to receive all costs and attorneys' fees incurred in enforcing its rights hereunder, even if no litigation is commenced.

8.5 Time is of Essence. Time is of the essence of this Agreement and all its provisions.

8.6 Successors and Assigns. All rights of Secured Party hereunder shall inure to the benefit of its successors and assigns; all obligations of Debtor shall bind its heirs, executors, administrators, successors and assigns.

8.7 Joint and Several Liability. If there be more than one Debtor their obligations hereunder shall be joint and several.

8.8 Usage. Unless otherwise defined or provided herein, all words used in this Agreement shall have the meaning given to them in the California Uniform Commercial Code.

8.9 Headings. Titles preceding any section of this Agreement are for convenience only and shall not be

construed to alter the meaning of the language contained therein.

8.10 Additional Documents. Debtor will execute any additional agreements, assignments or documents that may be deemed necessary or advisable by Secured Party to effectuate the purposes of this Agreement or to preserve and protect the Collateral or Secured Party's rights.

8.11 Severability. Each term, covenant, condition or provision of this Agreement shall be viewed as separate and distinct, and in the event that any such term, covenant, condition or provision shall be held by a court of competent jurisdiction to be invalid, the remaining provisions shall continue in full force and effect.

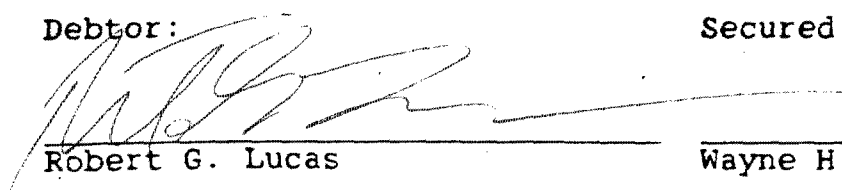
8.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

8.13 Choice of Law and Forum. The construction of this Agreement, and the rights and liabilities of the parties hereto, shall be governed by the laws of the State of California. In the event that litigation arises as a result of a dispute hereunder, said litigation shall be heard by a competent court sitting in the County of San Diego, State of

California, and Debtor consents to personal jurisdiction and venue therefor.

IN WITNESS WHEREOF, Debtor and Secured Party have caused this Agreement to be executed as of the date first above written.

Debtor:


Robert G. Lucas

Secured Party:

Wayne H. Waughtel

Barbara Waughtel

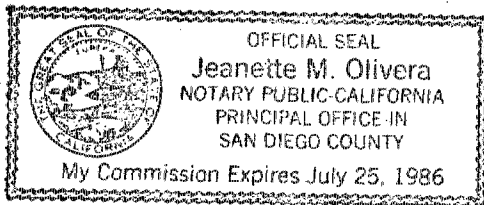
Helmut J. Dueck

Emma Lou Dueck

INDIVIDUAL FORM OF ACKNOWLEDGMENT

State of California)
) ss.
County of San Diego)

On this 6TH day of November, 1985, before me,
personally appeared ROBERT G. LUCAS, to me known to be the
person described in and who executed the foregoing instrument
and (s)he acknowledged that (s)he executed the same as his/her
free act and deed.



Jeanette M. Olivera
Notary's Signature

My Commission Expires
July 26, 1985

(S E A L)

State of California)
) ss.
County of San Diego)

On this _____ day of _____, 1985, before me,
personally appeared _____, to me known to be the
person described in and who executed the foregoing instrument
and (s)he acknowledged that (s)he executed the same as his/her
free act and deed.

Notary's Signature

My Commission Expires

(S E A L)

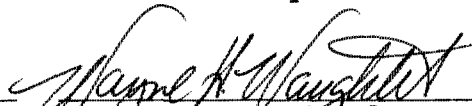
California, and Debtor consents to personal jurisdiction and venue therefor.

IN WITNESS WHEREOF, Debtor and Secured Party have caused this Agreement to be executed as of the date first above written.

Debtor:

Robert G. Lucas

Secured Party:


Wayne H. Waughtel


Barbara Waughtel

Helmut J. Dueck

Emma Lou Dueck

INDIVIDUAL FORM OF ACKNOWLEDGMENT

State of California)
) ss.
County of ~~San Diego~~)
 SAN BERNARDINO

On this 29th day of October, 1985, before me,
personally appeared Wayne H. Waughel to me known to be the
person described in and who executed the foregoing instrument
and (s)he acknowledged that (s)he executed the same as his/her
free act and deed.



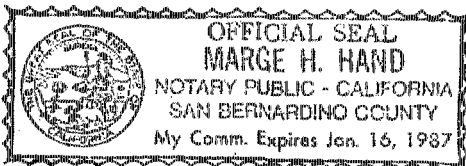
Marge H. Hand
Notary's Signature

My Commission Expires _____

(S E A L)

State of California)
) ss.
County of ~~San Diego~~)
 SAN BERNARDINO

On this 29th day of October, 1985, before me,
personally appeared BARBARA WAUGHTEL, to me known to be the
person described in and who executed the foregoing instrument
and (s)he acknowledged that (s)he executed the same as his/her
free act and deed.



Marge H. Hand
Notary's Signature

My Commission Expires _____

(S E A L)

California, and Debtor consents to personal jurisdiction and venue therefor.

IN WITNESS WHEREOF, Debtor and Secured Party have caused this Agreement to be executed as of the date first above written.

Debtor:

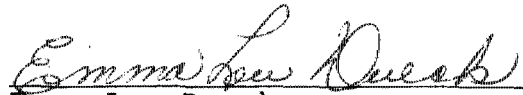
Secured Party:

Robert G. Lucas

Wayne H. Waughtel

Barbara Waughtel

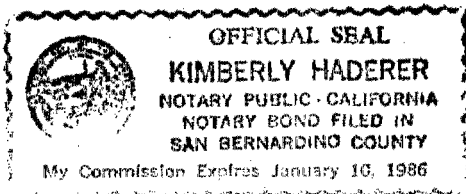

Helmut J. Dueck


Emma Lou Dueck

INDIVIDUAL FORM OF ACKNOWLEDGMENT

State of California)
) ss.
County of San Diego)

On this 29th day of October, 1985, before me,
personally appeared Helmut J. Dueck, to me known to be the
person described in and who executed the foregoing instrument
and ~~(s)~~he acknowledged that ~~(s)~~he executed the same as his/~~her~~
free act and deed.



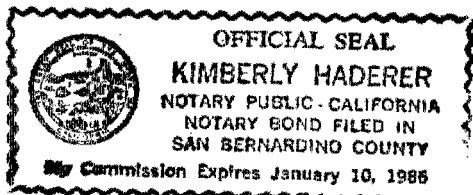
Kimberly Haderer
Notary's Signature

My Commission Expires
January 10, 1986

(S E A L)

State of California)
) ss:
County of San Diego)

On this 29th day of October, 1985, before me,
personally appeared Emma Lou Dueck, to me known to be the
person described in and who executed the foregoing instrument
and (s)he acknowledged that (s)he executed the same as ~~his~~/her
free act and deed.



Kimberly Haderer
Notary's Signature

My Commission Expires
January 10, 1986

(S E A L)

EXHIBIT "A"

Schedule of Equipment

Five (5) seventy-ton mechanical refrigerated rail cars built by Pacific Car and Foundry for Pacific Fruit Express in 1968, Class R-70-19, and identified as REMX 1096, REMX 1097, REMX 1111, REMX 1112 and REMX 1113 (formerly designated as PFE 456791, PFE 456842, PFE 456847, PFE 456747 and PFE 456780, respectively). Said rail cars are 63 feet, 8-3/8 inches long over pulling face of couplers, 56 feet, 8-5/8 inches over end sills (inside - 50 ft. long between load dividers, 9 ft. wide, 9 ft. 4 in. high) and have nominal loading capacity of 4,262 cubic feet and 130,000 lbs. Actual loading capacity is somewhat more -- up to about 134,000 lbs. Cars are equipped with 70-ton trucks, Hydracushion underframes, roller bearings, Type E rigid shank couplers, 9 ft. sliding plug doors, fiberglass inside wall panels, 5 in. polyurethane foamed-in-place insulation in walls and roof, 4 in. floors, Carrier model 66E15PFE68 refrigeration units, Detroit-Diesel Model 2-71 engines with 500 gallon fuel tanks and Equipco two-piece swivel type load dividers.

EXHIBIT "B"

Location of Collateral

Storage and repair yard of Pacific Fruit Express Company in
Tucson, Arizona.